IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1348 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALARKA ABDEREMAN

Versus

LEGAL HEIRS OF DECD. BAVA SUMAMATHWA

Appearance:

1. Civil Revision Application No. 1348 of 2001

MR SANDEEP N BHATT for Petitioner No. 1

..... for Respondents No. 1-1/9

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 18/12/2001

ORAL JUDGEMENT

Alarakha Abdreman-petitioner-tenant has filed this Civil Revision Application against the judgement and decree dated 21.4.2001 passed by the Second Extra Assistant Judge, Junagadh in Regular Civil Appeal No. 174

of 1991. The learned judge by his impugned judgement was pleased to dismiss and confirmed the judgement and decree passed by the learned Third Joint Civil Judge (S.D.), Junagadh, in Regular Civil Suit No. 915/1983. The learned trial judge by his impugned judgement and decree was pleased to allow the suit of the respondent original plaintiff and was pleased to pass a decree of possession in favour of the plaintiff landlord and against the tenant.

2. Mr. Bhatt, learned advocate for the petitioner stated that in this case the rent was only for Rs. 35/- and the tenant was in arrears of rent for the period 16.8.1981 to 31.10.1983 i.e. practically for two years and two months. The landlord addressed a letter dated 23.5.1983 claiming arrears of rent. However, in the said notice the landlord did not terminate the tenancy of the tenant. The tenant did not reply to the said notice nor did the tenant pay any amount. Thereafter, the plaintiff landlord addressed another letter dated 5.9.1983 for terminating the tenancy of the tenant. The tenant replied to the said notice on 16.9.1983. Thereafter, the Suit has been filed on 25.10.1983. The parties have led evidence oral as well as documentary on record. The learned trial judge by his judgement and decree dated 31.12.1990 was pleased to allow the suit of the plaintiff. The learned trial judge held that the defendant was in arrears of rent for more than six months. The plaintiff has also proved that the defendant tenant was causing nuisance. Therefore, the suit notice was legal and valid. The defendant failed and neglected to contend that he was ready and willing to pay the rent and on that ground the learned judge was pleased to pass the decree in favour of the plaintiff landlord.

3. Being aggrieved and dissatisfied with the aforesaid judgement and decree of the trial court, the tenant-defendant filed appeal being Regular Civil Appeal No. 174 of 1991 before the Second Extra Assistant Judge, Junagadh. The learned appellate judge by his judgement and decree dated 21.4.2001 was pleased to dismiss the appeal and confirm the judgement and decree passed by the trial court.

4. Being aggrieved and dissatisfied with the judgement and decree of the appellate court, the petitioner has filed this Civil Revision Application before this court on 18.6.2001. When earlier the matter reached hearing, this court, in absence of the learned counsel for the petitioner, after going through the record of the case, call for record and proceedings

before the lower court. Therefore, the Registry was directed to call for record and proceedings by order dated 3.12.2001.

5. Today, after going through the record and proceedings, Mr. Bhatt, learned advocate for the petitioner, states that the landlord has issued first notice on 23.5.1983 at Exh. 34. That notice was only for the arrears of rent but the landlord did not terminate the tenancy by the said notice. However, the tenant did not reply to the said notice nor did the tenant pay arrears of rent. Again thereafter the landlord addressed another notice dated 5.9.1983 to the tenant terminating the tenancy of the tenant. It is no doubt true that the tenant replied to the notice on 16.9.1983. Thereafter, the Suit was filed on 25.10.1983.

6. Mr. Bhatt, learned counsel for the petitioner, originally contended that the Suit was filed earlier and thereafter second notice was given. However, after going through the record and proceedings, that contention of the learned counsel for the petitioner is found to be incorrect. In view of this, I do not see any substance in the contention raised by the learned counsel for the petitioner. This Civil Revision Application is rejected. The Registry is directed to send record and proceedings to the trial court at an early date.

(K.M. MEHTA, J)
(pkn)